

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2257 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHURABHAI HARIBHAI

Versus

RADIYATBEN DEVJIBHAI

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Appearance:

MR SURESH M SHAH for Petitioner  
MR MD RANA for Respondent No. 1  
MR IM KAPUR for Respondent No. 6  
SERVED for Respondent No. 2-4

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 07/08/96

ORAL JUDGEMENT

1. Rule. Mr.M.D.Rana appears and waives service of rule on behalf of respondent No.1. Mr.I.M.Kapoor appears and waives service of rule on behalf of respondent No.6. With the consent of learned advocates appearing for parties matter is finally heard and disposed of today.

Petitioner before this court is the original defendant No.5 and respondent Nos 1 to 4 are the original defendant Nos 1 to 4. Respondent No.1 is the original plaintiff. The plaintiff instituted Reg.C.S.No.156/83 in the trial court to recover possession of the suit premises both from tenants as well as subtenants on the ground that the tenants have sublet the suit premises unauthorisedly to the present petitioner. In said suit summons was served on the present petitioner. It is his case that he engaged advocate and he appeared in the suit. It is his further case that thereafter he was never informed that he was required to file written statement or that he was required to submit his defence. He was also never informed that the trial of the suit is commenced.

2. It appears that respondent Nos 1 to 4 filed their written statement. The trial court thereafter framed issues. Trial court proceeded to record evidence of the witnesses. After the trial was over the trial court has by judgment and decree, dated 10.8.92 decreed the suit of the plaintiff holding that the plaintiff has been successful in proving that the defendant Nos 1 to 4 have illegally and unauthorisedly sublet the suit premises to defendant No.1.

3. Against such judgment and decree, the opponents have not preferred any appeal, but the present petitioner-sub-tenant preferred appeal in the court of Joint District Judge, Junagadh on 1st August, 1995. Since appeal was apparently time barred, he filed Mis.Civil Application No.82/95 for condonation of delay for not preferring appeal in the district court within time. After hearing the parties by giving cogent reasons to hold that no sufficient cause is shown by the petitioner-tenant as to which sufficient cause prevented him from filing appeal within prescribed period of limitation the lower appellate court by judgment and order, dated 13.12.1995 dismissed the Misc.Civil Application for condonation of delay. Obviously, that has resulted into dismissal of appeal.

4. At the initial hearing of this CRA, Mr.S.M.Shah, Ld.Sr.Counsel for petitioner very vehemently urged that in fact the advocate of the petitioner-tenant has never informed the petitioner during the span of about 8/9 years about the progress in the suit or about his requirement of filing written statement or about his presence in the court for the purpose of trial. The advocate has thus kept him in dark and even after the decree was passed, he was not immediately informed. In

cases like, in his submission, stricter view ought to have been taken against the advocate rather than punishing the litigant by refusing condonation of delay. This court was prima facie convinced by such submission, and therefore vide order dated 24.1.1996 it directed to issue notice to advocate and also directed him to file his reply. At that time, the petitioner was also directed to deposit amount of Rs.3,000/- in this Court and he deposited the same in this Court.

5. Thnereafter, the learned advocate has appeared through advocate--Mr.I.M.Kapoor and he has filed affidavit-in-reply. Along with affidavit in reply he has produced number of documents. One of such documents is application made by the subtenant for obtaining certified copy of judgment and decree dated 28.12.1992. He has urged before this court that he has discharged his duty and in fact the present petitioner has applied for certified copy by application dated 28.12.1992. The language of the application strangely is not one which is to be found in application for certified copy. Mr.S.M.Shah therefore doubted the typed xerox copy of such application and requested the court to call for the original application. Request was granted and the trial court was directed to send the original application for certified copy dated 28.12.1992. Such application is received by this court along with report of the Dist.Judge, Junagadh. On receipt of said application this court has gone through the application. The signature below the application is that of the present petitioner. The handwriting of the application may not be of the present petitioner. From such application it becomes clear that the petitioner has been informed by his advocate about the date of judgment and decree. Since he is a social worker he could not remain in contact with his advocate as he had gone out and that after his return from other place he has contacted his advocate and he applied for the certified copy. Such certified copy is applied on 28.12.1992.Mr.S.M.Shah has submitted before the court that the signature of the petitioner appears to be concocted one or one which the petitioner may not have done and to satisfy the conscience of the court this court has compared the signature of the petitioner along with his signature in the proceedings before the trial court, mainly on Vakalat Patra, and there is typical way of writing "Bhu" which is typical to the petitioner himself. About writing his father's name "Ri" is also very typically written. Though this court is not an expert in the subject, prima facie, it can be said that the petitioner is now not signing in the way in which he has signed on original

vakalat patra in the trial court as well as on application for certified copy.

6. It is pertinent to note that having approached the District Court the petitioner adopted different mode of signature, which is totally different from the one to which he was adhering to. This inconsistency in the signature is also very carefully noticed by this court. Say of the petitioner therefore that he was never informed by the advocate about the judgment and decree passed by the trial court and about the entire proceedings of the suit is rightly not accepted by the lower appellate court and the lower appellate court has rightly found that no sufficient cause was shown which would justify the condonation of delay. In the present case delay is also of a pretty long time. Against the judgment and decree of 10.9.92 the appeal is filed on 1.8.95, i.e. approximately after 3 years. This court shall have also to keep in mind that the suit for possession of the year 1983 and the landlady has succeeded in establishing the subtenancy and has got decree in her favour. I therefore do not see any fault in the judgment of the lower appellate court which would call for the interference of this court. CRA is therefore summarily rejected. Rule is discharged. Ad-interim relief stands vacated. Amount of Rs.3,000/which is deposited in this court is directed to be withdrawn by the landlady and to be appropriated towards mesne profits. R&P is directed to be sent back to the trial court. No costs.

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